

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

HOME DEPOT, U.S.A., and	)	
HOMERLEASE CO.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 1998-102 M/R
	)	<u>TRANSFERRED TO ST. THOMAS -</u>
	)	<u>ST. JOHN DIVISION</u>
BOHLKE INT'L AIRWAYS,	)	
	)	
Defendant.	)	
_____	)	
—	)	

ATTORNEYS:

Stacy L. White, Esq.  
St. Croix, U.S.V.I.  
*For the plaintiffs,*

Nancy V. Young, Esq.  
St. Croix, U.S.V.I.  
*For the defendant.*

MEMORANDUM

As the prevailing parties in this action, the plaintiffs seek an award of \$8,702.69 in costs and \$60,318.00 in attorneys' fees. The plaintiffs have submitted the affidavits of three attorneys for a total of 312 hours for time spent prosecuting this case: Stacy L. White, Esq. (\$200/hr.); Richard W. Feeley, Esq., corporate counsel for Home Depot, U.S.A., Inc. (\$175/hr.); and Michael E. Gorelick, Esq. (Abrams, Gorelick, Friedman & Jacobson, P.C.) (\$200/hr.). The plaintiffs also seek an upward adjustment in light of the

risks inherent in the contingency fee arrangement between the plaintiffs and their counsel. The defendant, on the other hand, argues that in light of the contingency fee arrangement and the lack of complexity of the issues involved, the Court should exercise its discretion and substantially reduce any award for attorneys' fees.

The decision whether to award attorneys' fees to a prevailing party is entirely within the Court's discretion, see V.I. CODE ANN. tit. 5, ' 541(b), and the existence of a contingency fee arrangement is only one factor to consider in reaching this decision, see *Jo-Ann's Launder Ctr., Inc. v. Chase Manhattan Bank*, 31 V.I. 226, 233 (D.V.I. 1995) ("Contingency fees are one factor to be applied when considering whether to award fees or what amount is appropriate."). An award of attorneys' fees in a contingent fee case "indemnif[ies] the prevailing party for a reasonable portion of [its] costs incurred in prosecuting or defending an action." *Id.* at 233-34; see also *Acosta v. Honda Motor Co.*, 717 F.2d 828, 843 (3d Cir. 1983). Accordingly, the Court will exercise its discretion and award the plaintiffs as the prevailing parties in this matter a reasonable portion of their fees and costs incurred in prosecuting this action.

In determining what constitutes "a reasonable portion" of the plaintiffs' fees and costs, the Court begins with a "lodestar" amount, *i.e.*, the reasonable number of hours expended at the reasonable hourly rate. See *Jo-Ann's Launder Ctr.*, 31 V.I. at 234. In assessing the reasonable number of hours expended, the Court focuses on "the significance of the overall relief obtained in relation to the hours reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933 (1983). Here, the defendants admitted liability, but a one-day trial involving expert opinion was required to assess the amount of the plaintiffs' damages. Thus, the number of hours expended in arriving at the ultimate damage award must be reasonable in order to be included in the lodestar amount.

To account for the duplication of effort among the three plaintiffs' attorneys, the Court will exclude from the lodestar amount the hours expended by Attorney Feeley (38.5 hours) and by Attorney Gorelick (78.8 hours). Likewise, the hours charged by local counsel for teleconferences with corporate counsel and co-counsel (10.1 hours) are also excluded. Numerous teleconferences with defense counsel and plaintiffs' witnesses account for another 26.6 hours of time

charged, which the Court reduces to the reasonable number of 10 hours. Finally, the Court will award fees for only five of the seven hours charged by local counsel for time spent researching the law. The reasonable number of hours spent (166 hours) multiplied by the reasonable hourly rate (\$200.00) is \$33,200.00, the lodestar amount.

As noted above, both the plaintiffs and the defendant seek an adjustment to the lodestar amount due to the contingency fee arrangement. The defendant also seeks a reduction on the ground that this was "not a complex case." The Court finds that the contingency fee arrangement warrants neither a reduction nor an increase in the lodestar amount. Moreover, the lodestar amount of \$33,200.00, which excludes hours for corporate counsel and co-counsel, already takes into account the level of complexity of the case and represents a fair and reasonable award.

As for costs, the Court will award the costs for filing the complaint (\$50.00), service of process (\$45.00), and deposition costs (\$1,688.00), for a total of \$1,768.00.

An appropriate order follows.

**ENTERED this 30th day of April, 2001.**

*Home Depot U.S.A., Inc. v. Bohlke Int'l Airways*  
Civ. No. 1998-102 STX  
Memorandum  
Page 5

FOR THE COURT:

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas K. Moore  
District Judge

ATTEST:  
WILFREDO F. MORALES  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk